

Calendar No. 968

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-965

MARCOS ROJOS RODRIGUEZ

JUNE 25, 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 1187]

The Committee on the Judiciary, to which was referred the bill (S. 1187) for the relief of Marcos Rojos Rodriguez, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to authorize and direct the Secretary of the Treasury to pay Marcos Rojos Rodriguez \$15,000 in full satisfaction of his claims against the United States for injuries suffered by him as the result of the accidental explosion of practice ammunition, negligently lost in a farm area by U.S. Army Air Corps personnel, and found by Marcos Rojos Rodriguez in May 1925.

The facts of the case are as follows:

The Department of the Army is not opposed to the enactment of this legislation.

Department of the Army records disclose that bills for the relief of Marcos Rodriguez were introduced, but not enacted, in the 69th, 70th, 71st, 72d, and 73d Congresses. These bills would have awarded Juan Rodriguez, father of Marcos Rodriguez, \$900 for injuries sustained by his son and expenses incurred as a result of an explosion of a bomb in a field at Kelly Aviation Field, San Antonio, Tex., on May 28, 1925.

Department of the Army records also disclose that a claim for \$3,000 was filed by Juan Rodriguez for injuries to his son that resulted from the May 28, 1925, explosion. The incident was investigated and the facts developed were reported to the

War Department. The claim file was referred to The Judge Advocate General for advice. The Judge Advocate General summarized the claim file as follows:

"The papers in reference show that Marcos Rodriguez, 13 years old, the son of the claimant, found, on May 28, 1925, a Mark I bomb fuse (Barlow type) in a potato field immediately north of and adjacent to Kelly Field, Tex.; that the child pounded the fuse upon a wagon wheel causing it to explode in his right hand and blowing off the thumb and first and middle fingers thereof; that the commanding officer at Kelly Field on June 4, 1925, appointed a board of officers under Army regulations to consider claims for damage or loss of private property; that this board met at Kelly Field, Tex., on July 13, 1925, to consider the claim of Juan Rodriguez; that the claimant under date of July 3, 1925, presented in writing a claim in the sum of \$3,000 for the injury to his son; that the testimony before the board of officers shows that the fuse found in the potato field by young Marcos Rodriguez was a Mark I bomb fuse (Barlow type) and that the condition of the same indicated that it had been lying [sic] out in the weather for some time, possibly 2 or 3 years; that no evidence was adduced to account for the presence of the bomb fuse in the potato field; that the board found that Marcos Rodriguez, 13 years old, son of Juan Rodriguez, lost a thumb and first two fingers of his right hand by reason of the explosion of a Mark I bomb fuse (Barlow type) which he found on a potato field immediately north of and adjacent to Kelly Field, Tex.; that the claim was one the settlement of which was not provided for by any specific law and should be considered in accordance with paragraph 10, Army Regulations 35-7020; that the injuries received by Marcos Rodriguez in the opinion of the board reasonably supported a claim for \$900; that the injury was not due wholly or in part to any fault or neglect on the part of the claimant or his son, but was probably due in part to ignorance and lack of experience on the part of the child; that the injury was not due wholly or in part to any fault or negligence of officers or employees of the Government; that the board recommended that the Secretary of War submit to the Congress a draft of proposed legislation for relief of the claimant in the sum of \$900; that the proceedings of the board were approved by the commanding officer at Kelly Field and forwarded through military channels; that on August 17, 1925, the claimant, Juan Rodriguez signed a writing in which he stated his willingness to accept \$900 in full settlement of the damages."

It was not clear to the Secretary of War whether the claim submitted by Juan Rodriguez was for damages sustained by him or his son, Marcos Rojas Rodriguez, and the Secretary did not forward the claim to Congress as the claims board recommended. On January 11, 1927, Congressman Wurzbach of Texas introduced H.R. 16204, 69th Congress, to award Mr. Rodriguez \$900. In response to a request for the views of the

War Department on H.R. 16204, the Secretary of War forwarded Congress a copy of the claim file and neither favored nor opposed the bill. A copy of the claim file has not been found in Department of the Army records, however, a copy is in the National Archives files on H.R. 16204, 69th Congress.

The Department of the Army has no objection to the compensation of Mr. Rodriguez for his injuries. It is observed that \$900 (the amount recommended by the claims board and the amount mentioned in the previous bills) invested in 1925 at 6 percent compounded annually would now amount to more than \$10,000. Had the \$900 been invested in appreciating property producing 6 percent income reinvested annually, the present worth would exceed \$15,000. A study of Texas jury verdicts for the period 1900 to 1960 indicated that, had Mr. Rodriguez been able to obtain a judgment of \$15,000 for his injuries, the judgment, while generous, would not have been excessive.

Prior to 1943, Mr. Rodriguez could obtain no compensation for injuries incurred in this manner other than by congressional action. None of the five bills introduced for his relief was enacted. When administrative settlement of noncombat personal injury claims was authorized in 1943 (act of July 3, 1943, 57 Stat. 372), administrative relief was limited to the reasonable medical and hospital expenses actually incurred. Although a claimant might petition Congress for additional compensation, administrative settlement of claims for other than reasonable medical and hospital expenses actually incurred was not authorized until the enactment of the act of September 2, 1958 (72 Stat. 1461). Damages for noncombat personal injury claims are now determined under the laws of the place where the act or omission causing the injury occurs (10 U.S.C. 2733, par. 11, AR 27-21).

In view of the foregoing, an award of \$15,000 for the damages suffered by Mr. Rodriguez is not unreasonable and enactment of the bill would not be, under the circumstances, preferential or precedential.

The committee, after a study of all of the foregoing, concurs in the report of the Department of the Army and recommends that the bill, S. 1187 be considered favorably.

Attached hereto and made a part hereof is the report from the Department of the Army to the chairman of the Senate Judiciary Committee, dated May 31, 1968.

DEPARTMENT OF THE ARMY,
Washington, D.C., May 31, 1968.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army on S. 2398, 90th Congress, a bill for the relief of Marcos Rojas Rodriguez.

This bill would authorize and direct the Secretary of the Treasury to pay Marcos Rojas Rodriguez \$15,000 in full satisfaction of his

claims against the United States for injuries suffered by him as the result of the accidental explosion of practice ammunition, negligently lost in a farm area by U.S. Army Air Corps personnel, and found by Marcos Rojas Rodriguez in May 1925.

The Department of the Army is not opposed to the bill.

Department of the Army records disclose that bills for the relief of Marcos Rodriguez were introduced, but not enacted, in the 69th, 70th, 71st, 72d, and 73d Congresses. These bills would have awarded Juan Rodriguez, father of Marcos Rodriguez, \$900 for injuries sustained by his son and expenses incurred as a result of an explosion of a bomb in a field at Kelly Aviation Field, San Antonio, Tex., on May 28, 1925.

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"The papers in reference show that Marcos Rodriguez, 13 years old, the son of the claimant, found, on May 28, 1925, a Mark I bomb fuse (Barlow type) in a potato field immediately north of and adjacent to Kelly Field, Tex.; that the child pounded the fuse upon a wagon wheel causing it to explode in his right hand and blowing off the thumb and first and middle fingers thereof; that the commanding officer at Kelly Field on June 4, 1925, appointed a board of officers under Army regulations to consider claims for damage or loss of private property; that this board met at Kelly Field, Tex., on July 13, 1925, to consider the claim of Juan Rodriguez; that the claimant under date of July 3, 1925, presented in writing a claim in the sum of \$3,000 for the injury to his son; that the testimony before the board of officers shows that the fuse found in the potato field by young Marcos Rodriguez was a Mark I bomb fuse (Barlow type) and that the condition of the same indicated that it had been lying [sic] out in the weather for some time, possibly 2 or 3 years; that no evidence was adduced to account for the presence of the bomb fuse in the potato field; that the board found that Marcos Rodriguez, 13 years old, son of Juan Rodriguez, lost a thumb and first two fingers of his right hand by reason of the explosion of a Mark I bomb fuse (Barlow type) which he found on a potato field immediately north of and adjacent to Kelly Field, Tex.; that the claim was one the settlement of which was not provided for by any specific law and should be considered in accordance with paragraph 10, Army Regulations 35-7020; that the injuries received by Marcos Rodriguez in the opinion of the board reasonably supported a claim for \$900; that the injury was not due wholly or in part to any fault or neglect on the part of the claimant or his son, but was probably due in part to ignorance and lack of experience on the part of the child; that the injury was not due wholly or in part to any fault or negligence of officers or employees of the Government; that the board recommended that the Secretary of War submit to the Congress a draft of proposed legislation for relief of the claimant in the sum of \$900; that the proceedings of the board were approved by the commanding officer at Kelly Field and forwarded through military channels; that on August 17, 1925,

the claimant, Juan Rodriguez signed a writing in which he stated his willingness to accept \$900 in full settlement of the damages."

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In view of the foregoing, an award of \$15,000 for the damages suffered by Mr. Rodriguez is not unreasonable and enactment of the bill would not be, under the circumstances, preferential or precedential. In the interest of accuracy, however, the bill, if favorably considered, should be amended by deleting lines 10 and 11 on the first page and lines 1 and 2 on the second page of the bill and substituting in place thereof the following: "a Mark I bomb fuse (Barlow type) which was found by Marcos Rojas Rodriguez, on May 28, 1925, in a potato field north of and adjacent to Kelly Field, Texas: *Pro*."

The cost of the bill, if enacted, will be \$15,000.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

STANLEY R. RESOR,
Secretary of the Army.

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